

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 03-3889, 04-1879

JOHN HAYMOND;
HOCHBERG, NAPOLI, DIAMOND, P.C.

v.

MARVIN LUNDY

Hochberg, Napoli, Diamond,

Appellant

On Appeal from Final Orders of the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 99-cv-05048)
District Judge: Honorable Norma L. Shapiro

Submitted Under Third Circuit LAR 34.1(a): January 13, 2005

Before: ROTH and CHERTOFF, *Circuit Judges*, and IRENAS, * *Senior District Judge*.

(Filed: February 10, 2005)

OPINION

* Honorable Joseph E. Irenas, Senior United States District Judge for the District of New Jersey, sitting by designation.

IRENAS, *Senior United States District Judge.*

This case arises from the dissolution of the law firm of Haymond & Lundy, LLP,¹ an event which has led to complex and seemingly interminable litigation in the Eastern District of Pennsylvania since the filing of the original complaint in 1999. *See Haymond v. Lundy*, Civ. No. 99-5048 (E.D. Pa. filed Oct. 12, 1999). After the firm split, Martin Lundy and John Haymond each formed new law practices, taking some of the cases and other assets from the partnership to their new offices. Lundy formed the Law Offices of Martin Lundy. Haymond was a partner in two new firms sharing the same name, Haymond Napoli Diamond, PC, one located in Connecticut (“HND-CT”) and one in Pennsylvania (“HND-Pa”).²

As a result of the litigation between Haymond and Lundy, the District Court determined that all fees collected in cases originated at Haymond & Lundy were property of the partners of the firm, notwithstanding the partners’ successor firms may have worked the cases through to resolution. *Haymond v. Lundy*, 117 F. Supp. 2d 371 (E.D. Pa. 2001). The District Court appointed a receiver and ordered, pursuant to the

¹Haymond & Lundy’s practice was largely made up of medical malpractice and other personal injury cases. John Haymond and Martin Lundy were the only partners in the firm, which also employed several associates, including Robert Hochberg, Andrew Napoli, and Scott Diamond.

²Haymond is no longer associated with the Pennsylvania firm, which is now known as Hochberg Napoli Diamond, PC. Haymond’s split from the firm is the subject of ongoing litigation. The Connecticut firm is now known as the Haymond Law Firm.

Partnership Agreement, that Lundy was entitled to sixty percent of any fees collected from the firm's cases, and Haymond was to receive forty percent. *Id.* at 385.

Shortly before Haymond & Lundy was dissolved, the firm opened two new medical malpractice cases on behalf of clients Cynthia Roberts and Rosa Porchea. After the split, both clients elected to retain HND-Pa to represent them. The Roberts case settled in 2002 and the Porchea case settled in 2001. Pennsylvania's Medical Care Availability and Reduction of Error Fund ("M-CARE") was responsible for providing a portion of the settlement amount in each case. Knowing that these fees were the subject of a dispute between Lundy and HND-Pa, M-CARE sent a \$275,000 check for the Roberts settlement and a \$350,000 check for Porchea to Judge Shapiro on December 30, 2002.

HND-Pa appeals from several orders which address the distribution of the M-CARE funds and the entitlement of the various parties to the attorney fees earned from the settlements of the Roberts and Porchea cases. Judge Shapiro's September 2, 2003, Order determined that Lundy was entitled to sixty percent of the fees from the Roberts and Porchea settlements, or \$267,411.08, but awarded Lundy only \$116,666.66, the amount the court held in escrow.³ *Haymond v. Lundy*, No. 99-5048 (E.D. Pa. Sept. 2, 2003) (order distributing net fees from Roberts and Porchea settlements). The District

³The Honorable James T. Giles, to whom the matter was transferred after HND-Pa filed a petition for a Writ of Mandamus to compel Judge Shapiro to release the M-CARE checks, issued an order on February 19, 2003, ordering the Clerk to release the Roberts check to Andrew Napoli, to release the sum of \$233,333.34 payable to Rosa Porchea to Napoli, and to hold the remaining \$116,666.66 in escrow.

Court's Order of February 3, 2004, granted Lundy a judgment in the amount of \$150,744.42, the difference between the amount in escrow and Lundy's full entitlement.⁴ *Haymond v. Lundy*, No. 99-5048 (E.D. Pa. Feb. 4, 2004) (order entering judgment for Lundy). The core of HND-Pa's appeal is its contention that it should not be bound by these orders because it is not a party to the litigation nor is it subject to the District Court's jurisdiction.

A thorough review of the record convinces us that the District Court correctly dealt with the funds from the Roberts and Porchea settlements. At a hearing held on February 5, 2003, before Chief Judge Giles, HND-Pa consented to the jurisdiction of the District Court to decide "all issues arising from the fee disputes in the settled Roberts and Porchea cases and to enter such orders and judgments as the court deems just and proper under the law and evidence adduced at any hearing." *Haymond v. Lundy*, No. 99-5048 (E.D. Pa. Feb. 19, 2003) (order memorializing holding of District Court at February 5, 2003, hearing). Therefore, the Orders issued by Judge Shapiro addressing the distribution of the M-CARE payments and her determination that Lundy was entitled to additional monies are consistent with HND-Pa's consent. We find no legal error in the District Court's Orders.

⁴On March 19, 2004, Judge Shapiro denied HND-Pa's Motion to Alter or Amend the Judgment of February 3, 2004.